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HOUSE BILL 319

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Irvin Harrison

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; DESIGNATING LOCAL EMPOWERMENT DISTRICTS; CREATING LOCAL LIQUOR CONTROL BOARDS; PERMITTING LOCAL LIQUOR CONTROL BOARDS TO RESTRICT ALCOHOL SALES UNDER CERTAIN CIRCUMSTANCES; CHANGING THE PROCEDURES AND AUTHORITY FOR APPROVAL OF NEW LIQUOR LICENSES AND TRANSFER OF EXISTING LICENSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Local Empowerment District Act".

Section 2. [NEW MATERIAL] PURPOSE OF ACT.--The purpose of the Local Empowerment District Act is to ensure that a liquor licensee conducts business in a lawful manner and that a licensee's alcohol sales do not unreasonably disturb the

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1 welfare, health, peace or safety of the community.

2 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
3 Local Empowerment District Act:

4 A. "board" means a local liquor control board;

5 B. "chronic public intoxication" means the effects
6 of public consumption of alcohol or public intoxication that
7 endanger the welfare, health, peace or safety of a community;

8 C. "government subdivision" means a county or
9 municipality or an area consisting of both a county and a
10 municipality within the county;

11 D. "intoxicated person" means a person, in a public
12 place, whose mental or physical functioning is so substantially
13 impaired as a result of the use of alcohol that the person has
14 become disorderly or has become unable to care for the person's
15 own safety;

16 E. "local empowerment district" means an area
17 within a government subdivision that is adversely affected by
18 chronic public intoxication or illegal activity associated with
19 alcohol sales or consumption and is so designated by a
20 government subdivision ordinance;

21 F. "local option district" means:

22 (1) a county that has voted to approve the
23 sale, serving or public consumption of alcoholic beverages
24 pursuant to the terms of the Liquor Control Act or any former
25 act;

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1 (2) an incorporated municipality that falls
2 within a county that has voted to approve the sale, serving or
3 public consumption of alcoholic beverages pursuant to the terms
4 of the Liquor Control Act or any former act; or

5 (3) an incorporated municipality of over five
6 thousand population that has independently voted to approve the
7 sale, serving or public consumption of alcoholic beverages
8 pursuant to the terms of the Liquor Control Act or any former
9 act; and

10 G. "off-premises alcohol sales" means offering for
11 sale or having in the licensee's possession with the intent to
12 sell alcoholic beverages in unbroken packages for consumption
13 and not for resale off the licensee's premises.

14 Section 4. [NEW MATERIAL] CHRONIC PUBLIC INTOXICATION--
15 PRESUMPTION.--A government subdivision shall presume that an
16 area has chronic public intoxication and is qualified for
17 designation as a local empowerment district if the government
18 subdivision, by local option, has imposed the local liquor
19 excise tax as provided in the Local Liquor Excise Tax Act and:

20 A. the area within the government subdivision
21 seeking to be designated as a local empowerment district has
22 held at least two percent of its licensed drivers in protective
23 custody in a twelve-month period pursuant to the Detoxification
24 Act;

25 B. the area within the government subdivision

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1 seeking to be designated as a local empowerment district has
2 arrested at least three percent of its licensed drivers for
3 driving while under the influence of intoxicating liquor
4 pursuant to Section 66-8-102 NMSA 1978 in a twelve-month
5 period; or

6 C. the area within the government subdivision
7 seeking to be designated as a local empowerment district has
8 had at least one-half percent of its licensed drivers involved
9 in alcohol-related injury crashes in a twelve-month period.

10 Section 5. [NEW MATERIAL] LOCAL LIQUOR CONTROL BOARD--
11 CREATION--MEMBERS.--

12 A. After a local empowerment district is so
13 designated by a government subdivision ordinance, a "local
14 liquor control board" is created in the local empowerment
15 district.

16 B. If a local empowerment district covers an area
17 consisting of both a county and a municipality within the
18 county, the board shall be composed of two ex-officio members
19 and eleven appointed members as follows:

20 (1) the sheriff of the county or the sheriff's
21 designee, who shall serve ex officio;

22 (2) the police chief of the municipality or
23 the chief's designee, who shall serve ex officio;

24 (3) one commissioner from the county, who
25 shall be appointed by the board of county commissioners;

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1 (4) one city councilor, who shall be appointed
2 by the governing body of the municipality;

3 (5) three representatives who reside in the
4 local empowerment district, who shall be appointed by the board
5 of county commissioners;

6 (6) two representatives from law enforcement
7 or the judiciary who reside in the local empowerment district,
8 who shall be appointed by the sheriff of the county;

9 (7) two representatives who reside in the
10 local empowerment district from the alcohol industry, who shall
11 be appointed by the board of county commissioners; and

12 (8) two representatives who reside in the
13 local empowerment district from substance abuse prevention or
14 treatment organizations, who shall be appointed by the board of
15 county commissioners.

16 C. If a local empowerment district covers an area
17 entirely within the city limits of a municipality, the board
18 shall be composed of two ex-officio members and nine appointed
19 members as follows:

20 (1) the sheriff of the county or the sheriff's
21 designee, who shall serve ex officio;

22 (2) the police chief of the municipality or
23 the chief's designee, who shall serve ex officio;

24 (3) one city councilor, who shall be appointed
25 by the governing body of the municipality;

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1 (4) two representatives who reside in the
2 local empowerment district, who shall be appointed by the
3 governing body of the municipality;

4 (5) two representatives from law enforcement
5 or the judiciary who reside in the local empowerment district,
6 who shall be appointed by the police chief of the municipality;

7 (6) two representatives who reside in the
8 local empowerment district from the alcohol industry, who shall
9 be appointed by the governing body of the municipality; and

10 (7) two representatives who reside in the
11 local empowerment district from substance abuse prevention or
12 treatment organizations, who shall be appointed by the
13 governing body of the municipality.

14 D. If a local empowerment district covers an area
15 entirely within a county without involving a municipality, the
16 board shall be composed of one ex-officio member and nine
17 appointed members as follows:

18 (1) the sheriff of the county or the sheriff's
19 designee, who shall serve ex officio;

20 (2) one commissioner from the county, who
21 shall be appointed by the board of county commissioners;

22 (3) two representatives who reside in the
23 local empowerment district, who shall be appointed by the board
24 of county commissioners;

25 (4) two representatives from law enforcement

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1 or the judiciary who reside in the local empowerment district,
2 who shall be appointed by the sheriff of the county;

3 (5) two representatives who reside in the
4 local empowerment district from the alcohol industry, who shall
5 be appointed by the board of county commissioners; and

6 (6) two representatives who reside in the
7 local empowerment district from substance abuse prevention or
8 treatment organizations, who shall be appointed by the board of
9 county commissioners.

10 Section 6. [NEW MATERIAL] LOCAL LIQUOR CONTROL BOARD--
11 RESPONSIBILITIES.--

12 A. The board shall select a chairperson, a vice
13 chairperson and other officers as it deems necessary.

14 B. The board shall meet no less than twice annually
15 and may meet more frequently upon the call of the chairperson.
16 A majority of board members then serving constitutes a quorum
17 for the transaction of board business.

18 C. After an area is designated by a government
19 subdivision ordinance as a local empowerment district, the
20 board shall implement a local license review process for liquor
21 license applications and renewals within the local empowerment
22 district.

23 D. After an area is designated by a government
24 subdivision ordinance as a local empowerment district, the
25 board may:

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1 (1) restrict off-premises alcohol sales by
2 licensees within the local empowerment district. The
3 restrictions shall be reasonably related to reducing chronic
4 public intoxication or illegal activity associated with off-
5 premises alcohol sales or consumption and may include
6 restrictions on:

7 (a) the hours of operation for off-
8 premises alcohol sales within the local empowerment district;

9 (b) the off-premises alcohol sales
10 within the local empowerment district, including fortified wine
11 as defined in Section 7-17-2 NMSA 1978; and

12 (c) alcohol container sizes available
13 for off-premises alcohol sales within the local empowerment
14 district; and

15 (2) restrict the off-premises alcohol sales
16 within a local empowerment district if:

17 (a) the government subdivision's law
18 enforcement agency or public health authority requests
19 restrictions on off-premises alcohol sales;

20 (b) the board determines that off-
21 premises alcohol sales are reasonably linked to chronic public
22 intoxication; and

23 (c) the government subdivision has
24 demonstrated that its voluntary efforts have failed to
25 significantly reduce chronic public intoxication.

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1 E. Before the board may implement restrictions on
2 off-premises alcohol sales, the government subdivision's
3 voluntary efforts shall include:

4 (1) notification of chronic public
5 intoxication to off-premises alcohol sales licensees in the
6 local empowerment district;

7 (2) documentation that the government
8 subdivision has made reasonable efforts to promote voluntary
9 business practices that reduce chronic public intoxication and
10 promote public welfare, health, peace and safety with off-
11 premises alcohol sales licensees within the local empowerment
12 district; and

13 (3) documentation that implementation of the
14 voluntary practices have been attempted for at least sixty days
15 before information is presented to the board that voluntary
16 practices have failed or need augmentation.

17 F. If the board approves off-premises alcohol sales
18 restrictions for a local empowerment district, the board shall
19 notify the appropriate beer and wine distributors of the off-
20 premises alcohol sales restrictions placed on off-premises
21 alcohol sales licensees within the local empowerment district.
22 If the board places restrictions on off-premises alcohol sales
23 licensees within a local empowerment district, a liquor store
24 within the local empowerment district shall not engage in off-
25 premises alcohol sales. Local empowerment district status will

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1 remain in effect until:

2 (1) the government subdivision repeals the
3 ordinance that designated the local empowerment district
4 recognized by the board; or

5 (2) the board repeals its recognition of a
6 local empowerment district as a result of a public hearing,
7 called by the board acting on its own initiative or at the
8 request of a community organization within the local
9 empowerment district; provided that the community
10 organization's request is made after the local empowerment
11 district has been so designated for at least two years.

12 Section 7. [NEW MATERIAL] LOCAL EMPOWERMENT DISTRICT--
13 REQUIREMENTS.--A local empowerment district shall:

14 A. not cover a geographic area that includes the
15 entire territory of a local option district unless the entire
16 local option district has a population of less than fifty
17 thousand;

18 B. be designated only if the government
19 subdivision:

20 (1) has specifically expressed a rationale for
21 the establishment of the local empowerment district in the
22 ordinance designating the district;

23 (2) has specifically expressed the boundaries
24 of the local empowerment district in the ordinance designating
25 the district so that:

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1 (a) the board may determine which off-
2 premises alcohol sales licensees are in the proposed district;
3 and

4 (b) the boundaries are understandable to
5 the general public; and

6 (3) includes in the ordinance designating the
7 local empowerment district findings demonstrating that:

8 (a) chronic public intoxication or
9 illegal activity associated with alcohol sales or consumption
10 within the proposed local empowerment district is contributing
11 to the deterioration of the quality of life within the area of
12 the proposed district or threatens the welfare, health, peace
13 or safety of the area's residents and visitors;

14 (b) there is a pervasive pattern of
15 chronic public intoxication documented in crime statistics,
16 police reports, emergency medical response data, detoxification
17 reports, sanitation reports, public health records or related
18 records concerning the area of the proposed district; and

19 (c) the government subdivision has made
20 a good faith effort to control chronic public intoxication
21 through voluntary practices, including cooperation with
22 neighborhood, citizen or business organizations and
23 notification of off-premises alcohol sales licensees within the
24 proposed local empowerment district of the chronic public
25 intoxication;

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1 C. obtain local empowerment district status on the
2 date of passage of the government subdivision's ordinance
3 designating the local empowerment district; and

4 D. hold a referendum when any resident of the local
5 empowerment district orders a referendum vote upon the
6 government subdivision's ordinance designating the local
7 empowerment district.

8 Section 8. [NEW MATERIAL] SEVERABILITY.--If any part or
9 application of the Local Empowerment District Act is held
10 invalid, the remainder or its application to other situations
11 or persons shall not be affected.

12 Section 9. Section 60-6B-2 NMSA 1978 (being Laws 1981,
13 Chapter 39, Section 38, as amended) is amended to read:

14 "60-6B-2. APPLICATIONS.--

15 A. Before a new license authorized by the Liquor
16 Control Act may be issued by the director, the applicant for
17 the license shall:

18 (1) submit to the director a written
19 application for the license under oath, in the form prescribed
20 by and stating the information required by the director,
21 together with a nonrefundable application fee of two hundred
22 dollars (\$200);

23 (2) submit to the director for his approval a
24 description, including floor plans, in a form prescribed by the
25 director, that shows the proposed licensed premises for which

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1 the license application is submitted. The area represented by
2 the approved description shall become the licensed premises;

3 (3) if the applicant is a corporation, be
4 required to submit as part of its application the following:

5 (a) a certified copy of its articles of
6 incorporation or, if a foreign corporation, a certified copy of
7 its certificate of authority;

8 (b) the names and addresses of all
9 officers and directors and those stockholders owning ten
10 percent or more of the voting stock of the corporation and the
11 amounts of stock held by each stockholder; provided, however, a
12 corporation may not be licensed if an officer, manager,
13 director or holder of more than ten percent of the stock would
14 not be eligible to hold a license pursuant to the Liquor
15 Control Act ~~[except that]~~. The provision of Subsection D of
16 Section 60-6B-1 NMSA 1978 shall not apply if the stock is
17 listed with a national securities exchange;

18 (c) the name of the resident agent of
19 the corporation authorized to accept service of process for all
20 purposes, including orders and notices of the director, which
21 agent shall be approved by the director ~~[with respect to his
22 character]~~;

23 (d) a duly executed power of attorney
24 authorizing the agent described in Subparagraph (c) of this
25 paragraph to exercise full authority, control and

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1 responsibility for the conduct of [~~all~~] business and
2 transactions of the corporation within the state relative to
3 the sale of alcoholic beverages under authority of the license
4 requested; and

5 (e) [~~such~~] additional information
6 regarding the corporation as the director may require to assure
7 full disclosure of the corporation's structure and financial
8 responsibility;

9 (4) if the applicant is a limited partnership,
10 submit as part of its application the following:

11 (a) a certified copy of its certificate
12 of limited partnership;

13 (b) the names and addresses of [~~all~~]
14 each general [~~partners~~] partner and of [~~all~~] each limited
15 [~~partners~~] partner contributing ten percent or more of the
16 total value of contributions made to the limited partnership or
17 entitled to ten percent or more of the profits earned or other
18 income paid by the limited partnership. A limited partnership
19 shall not receive a license if [~~any~~] each partner designated in
20 this subsection would not be eligible to hold a license issued
21 pursuant to the Liquor Control Act; and

22 (c) [~~such~~] additional information
23 regarding the limited partnership as the director may require
24 to assure full disclosure of the limited partnership's
25 structure and financial responsibility; and

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1 (5) obtain approval for the issuance from the
2 governing body of the local option district in which the
3 proposed licensed premises are to be located in accordance with
4 the provisions of the Liquor Control Act.

5 B. ~~Every~~ An applicant for a new license ~~[or for a~~
6 ~~transfer of ownership of a license]~~, if an individual or
7 general partnership, shall file with the application two
8 complete sets of fingerprints of each individual, taken under
9 the supervision of and certified to by an officer of the New
10 Mexico state police, a county sheriff or a municipal chief of
11 police. If the applicant is a corporation, it shall file two
12 complete sets of fingerprints ~~[for]~~ of each stockholder holding
13 ten percent or more of the outstanding stock and of the
14 principal officer, director and ~~[the]~~ agent responsible for the
15 operation of the licensed business. The fingerprints shall be
16 taken and certified to as provided for an individual or
17 partnership. If the applicant is a limited partnership, it
18 shall file two complete sets of fingerprints ~~[for]~~ of each
19 general partner and ~~[for]~~ of each limited partner contributing
20 ten percent or more of the total value of contributions made to
21 the limited partnership or entitled to ten percent or more of
22 the profits earned or other compensation by way of income paid
23 by the limited partnership. The fingerprints shall be taken
24 and certified to as provided for an individual or partnership.

25 C. Upon submission of a sworn affidavit from each

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1 person who is required to file fingerprints stating that the
2 person has not been convicted of a felony in any jurisdiction
3 and pending the results of background investigations, a
4 temporary license for ninety days may be issued. The temporary
5 license may be extended by the director for an additional
6 ninety days if the director determines there is not sufficient
7 time to complete the background investigation or obtain reviews
8 of fingerprints from appropriate agencies. A temporary license
9 shall be surrendered immediately upon order of the director.

10 D. An applicant who files a false affidavit shall
11 be denied a license. When the director determines a false
12 affidavit has been filed, ~~[he]~~ the director shall refer the
13 matter to the attorney general or district attorney for
14 prosecution of perjury.

15 E. If an applicant is not a resident of New Mexico,
16 fingerprints may be taken under supervision and certification
17 of comparable officers in the state of residence of the
18 applicant.

19 ~~[F. Before issuing a license, the department shall~~
20 ~~hold a public hearing within thirty days after receipt of the~~
21 ~~application pursuant to Subsection K of this section.~~

22 ~~G. An application for transfer of ownership shall~~
23 ~~be filed with the department no later than thirty days after~~
24 ~~the date a person acquired an ownership interest in a license.~~
25 ~~It shall contain the actual date of sale of the license and~~

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1 shall be accompanied by a sworn affidavit from the owner of
2 record of the license agreeing to the sale of the license to
3 the applicant as well as attesting to the accuracy of the
4 information required by this section to be filed with the
5 department. A license shall not be transferred unless it will
6 be placed into operation in an actual location within one
7 hundred twenty days of issuance of the license, unless for good
8 cause shown the director grants an additional extension for a
9 length of time determined by the director.

10 H.] F. Whenever [~~it appears to~~] the director
11 determines that there will be more applications for new
12 licenses than the available number of new licenses [~~during any~~
13 ~~time period~~], a random selection method for the qualification,
14 approval and issuance of new licenses shall be provided by the
15 director. The random selection method shall allow each
16 applicant an equal opportunity to obtain an available license,
17 provided that all dispenser's and retailer's licenses issued in
18 [~~any~~] a calendar year shall be issued to residents of the
19 state. For the purposes of random selection, the director
20 shall also set a reasonable deadline by which applications for
21 the available licenses shall be filed. A person shall not file
22 more than one application for each available license and no
23 more than three applications per calendar year.

24 [~~F.~~] G. After the deadline set in accordance with
25 Subsection [H] F of this section, no more than ten applications

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1 per available license shall be selected at random for priority
2 of qualification and approval. Within thirty days after the
3 random selection for the ten priority positions for each
4 license, a hearing [~~pursuant to Subsection K of this section~~]
5 shall be held to determine the qualifications of the applicant
6 having the highest priority for each available license. If
7 necessary, [~~such~~] a hearing shall be held on each selected
8 application by priority until a qualified applicant for each
9 available license is approved. Further random selections for
10 priority positions shall also be held pursuant to this section
11 as necessary.

12 [~~J.~~] H. All applications submitted for a license
13 shall expire upon the director's final approval of a qualified
14 applicant for that available license.

15 [~~K.~~ ~~The director shall notify the applicant by~~
16 ~~certified mail of the date, time and place of the hearing. The~~
17 ~~hearing shall be held in Santa Fe. The director may designate~~
18 ~~a hearing officer to take evidence at the hearing. The~~
19 ~~director or the hearing officer shall have the power to~~
20 ~~administer oaths.~~

21 [~~L.~~ ~~In determining whether a license shall be~~
22 ~~issued, the director shall take into consideration all~~
23 ~~requirements of the Liquor Control Act. In the issuance of a~~
24 ~~license, the director shall specifically consider the nature~~
25 ~~and number of prior violations of the Liquor Control Act by the~~

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1 ~~applicant or of any citations issued within the prior five~~
2 ~~years against a license held by the applicant or in which the~~
3 ~~applicant had an ownership interest required to be disclosed~~
4 ~~under the Liquor Control Act. The director shall disapprove~~
5 ~~the issuance or give preliminary approval of the issuance of~~
6 ~~the license based upon a review of all documentation submitted~~
7 ~~and any investigation deemed necessary by the director.~~

8 M. ~~Before a new license is issued for a location,~~
9 ~~the director shall cause a notice of the application therefor~~
10 ~~to be posted conspicuously, on a sign not smaller than thirty~~
11 ~~inches by forty inches, on the outside of the front wall or~~
12 ~~front entrance of the immediate premises for which the license~~
13 ~~is sought or, if no building or improvements exist on the~~
14 ~~premises, the notice shall be posted at the front entrance of~~
15 ~~the immediate premises for which the license is sought, on a~~
16 ~~billboard not smaller than five feet by five feet. The~~
17 ~~contents of the notice shall be in the form prescribed by the~~
18 ~~department, and such posting shall be over a continuous period~~
19 ~~of twenty days prior to preliminary approval of the license.~~

20 N. ~~A license shall not be issued until the posting~~
21 ~~requirements of Subsection M of this section have been met.~~

22 O. ~~All costs of publication and posting shall be~~
23 ~~paid by the applicant.~~

24 P. ~~It is unlawful for a person to remove or deface~~
25 ~~a notice posted in accordance with this section. A person~~

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1 ~~convicted of a violation of this subsection shall be punished~~
2 ~~by a fine of not more than three hundred dollars (\$300) or by~~
3 ~~imprisonment in the county jail for not more than one hundred~~
4 ~~twenty days or by both.]~~

5 I. The director shall investigate the applicant's
6 records to determine the nature and number of prior violations
7 of the Liquor Control Act by the applicant and the nature and
8 number of citations issued within the previous five years
9 against a license held by the applicant or in which the
10 applicant had an ownership interest required to be disclosed
11 pursuant to the Liquor Control Act.

12 J. A license shall not be issued until the
13 applicant meets all the requirements of the Liquor Control Act.
14 The director shall establish a process for verification and
15 clarification of the information submitted by the applicant.

16 K. The director shall forward to the local
17 governing body where the license is located:

18 (1) a certification that the application is
19 complete along with the information necessary to identify the
20 applicant and the location of the license; and

21 (2) a request that the local governing body
22 consider the application for approval.

23 ~~[Q-]~~ L. A person aggrieved by a decision made by
24 the director as to the approval or disapproval of the issuance
25 of a license may appeal to the district court pursuant to the

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1 provisions of Section 39-3-1.1 NMSA 1978. If the disapproval
2 is based upon local option district disapproval pursuant to
3 Subsection [H] I of Section 60-6B-4 NMSA 1978, the local option
4 district shall be a necessary party to [~~any~~] the appeal. The
5 decision of the director shall continue in force, pending a
6 reversal or modification by the district court, unless
7 otherwise ordered by the court."

8 Section 10. A new section of the Liquor Control Act,
9 Section 60-6B-2.1 NMSA 1978, is enacted to read:

10 "60-6B-2.1. [NEW MATERIAL] APPLICATIONS FOR TRANSFER OF
11 OWNERSHIP.--

12 A. An application for transfer of ownership of a
13 liquor license shall be filed with the director no later than
14 thirty days after the date a person acquired an ownership
15 interest in a license. The application, to be filed with the
16 director, shall contain the actual date of sale of the license
17 and shall be accompanied by a sworn affidavit from the owner of
18 record of the license agreeing to the sale of the license to
19 the applicant as well as attesting to the accuracy of the
20 information required by this section. Applications for
21 transfer of ownership shall include all the information
22 required by Section 60-6B-2 NMSA 1978.

23 B. A license shall not be transferred unless:

24 (1) it will be placed into operation in an
25 actual location within one hundred twenty days of issuance of

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1 the license; or

2 (2) upon a showing of good cause, the director
3 grants an additional extension for a length of time determined
4 by the director.

5 C. An application for transfer of ownership shall
6 include a certification that all wholesalers who are creditors
7 of the licensee have been paid or that satisfactory
8 arrangements have been made between the licensee and the
9 wholesaler for the payment of debts. Such debts shall
10 constitute a lien on the license, and the lien shall be deemed
11 to have arisen on the date the debt was originally incurred.
12 An application for transfer of ownership is not complete until
13 the director certifies that the requirements of this section
14 have been met.

15 D. Upon receipt of an application for transfer of
16 ownership of a liquor license, the director shall investigate
17 whether there are outstanding unresolved citations against the
18 licensee for violations of the Liquor Control Act. An
19 application for transfer of ownership is not complete until all
20 outstanding citations against the licensee have been resolved
21 and the director so certifies.

22 E. The application shall include a certification
23 that gross receipts taxes due have been paid and that no tax
24 liens against the licensee exist.

25 F. A license shall not be transferred until the

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1 applicant meets all the requirements of the Liquor Control Act.
2 The director shall establish a process for verification and
3 clarification of the information submitted by the applicant.

4 G. The director shall forward a certification that
5 the application is complete, along with the information
6 necessary to identify the applicant and the location of the
7 license, to the local governing body where the license is
8 located for approval consideration."

9 Section 11. A new section of the Liquor Control Act,
10 Section 60-6B-2.2 NMSA 1978, is enacted to read:

11 "60-6B-2.2. [NEW MATERIAL] APPLICATIONS FOR TRANSFER OF
12 LOCATION.--

13 A. An application for transfer of an existing
14 liquor license to a different location within the same local
15 option district shall be filed with the director.

16 B. An application shall include a certification
17 that all wholesalers who are creditors of the licensee have
18 been paid or that satisfactory arrangements have been made
19 between the licensee and wholesalers for the payment of debts.
20 Such debts constitute a lien on the licensee, and the lien
21 shall be deemed to have arisen on the date the debt was
22 originally incurred. An application for the transfer of
23 location is not complete until the director certifies that the
24 requirements of this section have been met.

25 C. Upon receipt of an application for transfer of

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1 location of a liquor license, the director shall investigate
2 whether there are outstanding unresolved citations against the
3 licensee for violations of the Liquor Control Act. An
4 application for transfer of location is not complete until all
5 outstanding citations against the licensee have been resolved
6 and the director so certifies.

7 D. The application shall include a certification
8 that gross receipts taxes due have been paid and that no tax
9 liens against the licensee exist.

10 E. The location of a license shall not be
11 transferred until the applicant meets all the requirements of
12 the Liquor Control Act. The director shall establish a process
13 for verification and clarification of the information submitted
14 by the applicant.

15 F. The director shall forward a certification that
16 the application is complete, along with the information
17 necessary to identify the applicant and the location of the
18 license, to the local governing body where the license is
19 located for approval consideration."

20 Section 12. Section 60-6B-4 NMSA 1978 (being Laws 1981,
21 Chapter 39, Section 40) is amended to read:

22 "60-6B-4. ISSUANCE OR TRANSFER OF LICENSE--APPROVAL OF
23 APPROPRIATE GOVERNING BODY.--

24 A. Prior to the approval of the issuance of a new
25 license, and prior to the approval of [~~any~~] a transfer

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1 permitted by Section ~~[39 or 113 of the Liquor Control Act]~~
2 60-6B-3 or 60-6B-12 NMSA 1978, the director shall ~~[notify the~~
3 ~~governing body of his preliminary approval of the issuance or~~
4 ~~transfer of the license. Notice]~~ forward the certification of
5 the application for issuance or transfer of the license to the
6 governing body of the political subdivision where the license
7 is located for approval consideration. The certification shall
8 be forwarded to the governing body ~~[shall be]~~ by certified
9 mail.

10 B. A governing body ~~[which]~~ that has received a
11 ~~[notice of preliminary approval of]~~ certification of an
12 application for the issuance or transfer of a license from the
13 ~~[department]~~ director may approve or disapprove the issuance or
14 transfer of the license in accordance with the provisions of
15 this section.

16 ~~[G. Within forty-five days after receipt of a~~
17 ~~notice of preliminary approval from the department, the~~
18 ~~governing body shall hold a public hearing on the question of~~
19 ~~whether the department should approve the proposed issuance or~~
20 ~~transfer.]~~

21 C. Within twenty-one days of receipt of the
22 certification, the governing body shall post notice of the
23 application conspicuously, on a sign not smaller than thirty
24 inches by forty inches, on the outside of the front wall or
25 front entrance of the immediate premises for which the license

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1 is sought. The contents of the notice shall be in the form
2 prescribed by the director, and the posting shall be over a
3 continuous period of twenty days prior to the public hearing on
4 the question of approval of the issuance or transfer of the
5 license.

6 D. Within forty-five days after the receipt of a
7 certification of an application for issuance or transfer of a
8 liquor license, the local governing body shall hold a public
9 hearing to consider whether to approve the proposed issuance or
10 transfer.

11 [~~D-~~] E. Notice of the public hearing required by
12 Subsection [~~E~~] D of this section shall be given by the
13 governing body by:

14 (1) publishing a notice of the date, time and
15 place of the hearing at least once a week for two consecutive
16 weeks in a newspaper of general circulation within the
17 territorial limits of the governing body. The notice shall set
18 forth:

19 (a) the name and address of the
20 licensee;

21 (b) the action proposed to be taken by
22 the department;

23 (c) the location of the licensee's
24 premises; and

25 (d) [~~such~~] other information as may be

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1 required by the department; and

2 (2) sending a notice by certified mail to the
3 applicant of the date, time and place of the public hearing.

4 F. All costs of publication and posting shall be
5 paid by the applicant.

6 G. It is unlawful for a person to remove or deface
7 a notice posted in accordance with this section. A person
8 convicted of a violation of this subsection shall be punished
9 by a fine of not more than three hundred dollars (\$300) or by
10 imprisonment for not more than one hundred twenty days, or
11 both.

12 [~~E-~~] H. The governing body may designate a hearing
13 officer to conduct the hearing. A record shall be made of the
14 hearing.

15 [~~F-~~] I. The governing body may disapprove the
16 issuance or transfer of the license if:

17 (1) the proposed location is within an area
18 where the sale of alcoholic beverages is prohibited by the laws
19 of New Mexico;

20 (2) the issuance or transfer would be in
21 violation of a zoning or other ordinance of the governing body;
22 or

23 (3) the issuance or transfer would be
24 detrimental to the public health, safety or morals of the
25 residents of the local option district.

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1 J. Disapproval shall be supported by substantial
2 evidence, but general health and safety concerns of the
3 community as a whole, without considering the specific location
4 where the license is proposed to be transferred, are sufficient
5 to support a decision to disapprove issuance or transfer of the
6 liquor license.

7 ~~[G.] K.~~ Within thirty days after the public
8 hearing, the governing body shall notify the ~~[department as to]~~
9 director whether the governing body has approved or disapproved
10 the proposed issuance or transfer of the license. ~~[If the~~
11 ~~governing body fails to either approve or disapprove the~~
12 ~~issuance or transfer of the license within thirty days after~~
13 ~~the public hearing, the director may give final approval to the~~
14 ~~issuance or transfer of the license.~~

15 ~~H. If the governing body disapproves the issuance~~
16 ~~or transfer of the license, it shall notify the department~~
17 ~~within the time required by Subsection G of this section~~
18 ~~setting forth the reasons for the disapproval. A copy of the~~
19 ~~minutes of the public hearing shall be submitted to the~~
20 ~~department by the governing body with the notice of~~
21 ~~disapproval. If the governing body disapproves of the issuance~~
22 ~~or transfer of the license, the director shall disapprove the~~
23 ~~issuance or transfer of the license.~~

24 ~~I. If the governing body approves the issuance or~~
25 ~~transfer of the license, it shall notify the department within~~

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1 ~~the time required by Subsection G of this section of its~~
2 ~~approval. If the governing body approves of the issuance or~~
3 ~~transfer of the license, the director shall approve the~~
4 ~~issuance or transfer of the license.]~~

5 L. Within fifteen days after receipt of the notice
6 of the governing body's decisions, the director shall issue the
7 license if the governing body has:

8 (1) approved issuance or transfer; or

9 (2) neither approved nor disapproved issuance
10 or transfer.

11 M. The director shall not issue the license if the
12 governing body has disapproved issuance or transfer.

13 N. A person aggrieved by a decision made by the
14 director as to the approval or disapproval of the issuance of a
15 license may appeal to the district court pursuant to the
16 provisions of Section 39-3-1.1 NMSA 1978. If the disapproval
17 is based upon the governing body's disapproval pursuant to
18 Subsection I of this section, the local option district shall
19 be a necessary party to the appeal. The decision of the
20 director shall continue in force, pending a reversal or
21 modification by the district court, unless otherwise ordered by
22 the court."

23 Section 13. Section 60-6B-12 NMSA 1978 (being Laws 1981,
24 Chapter 39, Section 113, as amended) is amended to read:

25 "60-6B-12. INTER-LOCAL OPTION DISTRICT TRANSFERS.--

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1 A. ~~[All]~~ Dispenser's and retailer's licenses
2 originally issued before July 1, 1981, except rural dispenser's
3 and rural retailer's licenses and canopy licenses that were
4 replaced by dispenser's licenses pursuant to Section 60-6B-16
5 NMSA 1978, may be transferred to any location within the state,
6 except class B counties having a population of between fifty-
7 six thousand and fifty-seven thousand according to the 1980
8 federal decennial census, the municipalities located within
9 those class B counties and any municipality or county that
10 prohibits by election the transfer of a license from another
11 local option district, without regard to the limitations on the
12 maximum or minimum number of licenses provided in Section
13 60-6A-18 NMSA 1978, not otherwise contrary to law subject to
14 the approval of transferring locations of ~~[such]~~ liquor
15 licenses of the governing body for that location and provided
16 ~~[all]~~ the requirements of the Liquor Control Act and department
17 regulations for the transfer of licenses are fulfilled and
18 provided ~~[further]~~:

19 (1) the transfer of location does not lower
20 the number of dispenser's and retailer's licenses below that
21 number allowed by law in the local option district from which a
22 license will be transferred;

23 (2) ~~[beginning in calendar year 1997]~~ no more
24 than ten dispenser's or retailer's licenses shall be
25 transferred to ~~[any]~~ a local option district in ~~[any]~~ a

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1 calendar year;

2 (3) the dispenser's or retailer's licenses
3 transferred under this section shall count in the computation
4 of the limitation of the maximum number of licenses that may be
5 issued in the future in ~~[any]~~ a local option district as
6 provided in Section 60-6A-18 NMSA 1978 for the purpose of
7 determining whether additional licenses may be issued in the
8 local option district under the provisions of Subsection ~~[E]~~ K
9 of Section ~~[60-6B-2]~~ 60-6B-4 NMSA 1978; and

10 (4) the dispenser's or retailer's licenses
11 shall be operated or leased by the person who transfers the
12 license to the local option district for at least a period of
13 one year from the date of the approval of the transfer by the
14 ~~[department]~~ director.

15 B. Transfers of location of each liquor license
16 pursuant to Subsection A of this section shall become effective
17 upon approval of the local governing body, unless within one
18 hundred twenty days after the effective date of the Liquor
19 Control Act a petition requesting an election on the question
20 of approval of statewide transfers of liquor licenses into that
21 local option district is filed with the clerk of the local
22 option district and the petition is signed by at least five
23 percent of the number of registered voters of the district.
24 The clerk of the district shall verify the petition signatures.
25 If the petition is verified as containing the required number

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1 of signatures of registered voters, the governing body shall
2 adopt a resolution calling an election on the question of
3 approving or disapproving statewide transfers of liquor
4 licenses into that district. Notice of ~~[such]~~ the election
5 shall be published as provided in Section 3-8-35 NMSA 1978, and
6 the election shall be held within sixty days after the date the
7 petition is verified or it may be held in conjunction with a
8 regular election of the governing body if ~~[such]~~ the election
9 occurs within sixty days after the date of verification. If a
10 majority of the registered voters of the district voting in
11 ~~[such]~~ the election votes to approve statewide transfers of
12 liquor licenses into the local option district, each license
13 proposing to be transferred shall be subject to the approval of
14 the governing body. If the voters of the district voting in
15 the election vote against the approval, then all statewide
16 transfers of liquor licenses pursuant to Subsection A of this
17 section shall be prohibited in that district, unless a petition
18 is filed requesting the question be again submitted to the
19 voters as provided in this subsection. The question of
20 approving or disapproving statewide transfers of liquor
21 licenses into the local option district shall not be submitted
22 again within two years from the date of the last election on
23 the question.

24 C. ~~[Any]~~ A dispenser's license transferred pursuant
25 to this section outside its local option district shall only

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1 entitle the licensee to sell, serve or permit the consumption
2 of alcoholic beverages by the drink on the licensed premises.

3 D. Rural dispenser's, rural retailer's and rural
4 club licenses issued under [~~any~~] a former act may be
5 transferred to any location, subject to the location
6 restrictions [~~as to location~~] contained in the Liquor Control
7 Act, within the unincorporated area of the county in which they
8 are currently located; provided they shall not be transferred
9 to [~~any~~] a location within ten miles of another licensed
10 premises; and provided further that [~~all~~] requirements of the
11 Liquor Control Act and department regulations for the transfer
12 of licenses are fulfilled."